IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

C.W.P. No. 13733 of 2006

Date of Decision: November 6, 2006

Rajesh Kumar

…..Petitioner

Vs.

State of Haryana and others

…..Respondents

CORAM: HON'BLE MR. JUSTICE M.M. KUMAR.

HON'BLE MR. JUSTICE M.M.S. BEDI.

Present:- Mr. Shailender Kashyap, Advocate for the petitioner.

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M.M. KUMAR. J. (ORAL)

The prayer made by the petitioner in the instant petition is for quashing order dated August 30, 2005 (P-10) and for issuance of direction to the respondents to assign the petitioner seniority from the date of his initial appointment. The petitioner was appointed on the post of Basic Foundation Course Instructor under 10+2 Scheme at Vocational Education Centre, Dighot. He joined as such on October 1, 1984. On January 19, 1993, 53 posts of Basic BFC Instructor including that of the petitioner were abolished. The petitioner challenged that order by filing Civil Writ Petition No. 1417 of 1993 and the termination of the petitioner was stayed. On

October 23, 1997, the services of the petitioner were regularized w.e.f. November 1,1986 (P-3) and in the joint seniority list of Language Teachers/ Vocational Instructors issued on October 14, 1999 (P-4), his name figured at Sr. No.81. It is appropriate to mention that the aforementioned seniority list was as it stood on December 31, 1988. On November 23, 2001, respondent No.2 issued a letter for adjustment of BFC Instructors against vacant posts available in the Department. The petitioner was asked to exercise option for adjustment against the vacant post of Lineman (Theory) Instructor. Accordingly, the petitioner exercise his option on December 15, 2001. It was made clear that the exercise of option would mean that the petitioner would not be entitled to seniority for the service rendered against the post of BFC Instructor but he would be entitled to all other benefits in respect of the services rendered from October 1,1984. After the exercise of option, the petitioner was adjusted against the vacant post and letter to that effect was issued by respondent No.2 (P-7). The petitioner made a representation which remained pending and eventually he filed Civil Writ Petition No. 8080 of 2005 which was disposed of by a Division Bench of this Court directing the respondents to pass a speaking order. In the speaking order, it has been clarified that the service benefit to the petitioner for all intents and purposes would be granted except seniority on the post of BFC Instructor, as he had opted vide letter dated December 12, 2001 which categorically states that he was willing to accept seniority from the date of joining on the respective post on which he has been adjusted subject to the condition that his past service be counted for all other benefits including pension and pay

fixation. It was after the receipt of the aforementioned option that the petitioner was considered by the Department as per Government instructions dated November 8, 2001 and he was appointed as Lineman (Theory) Instructor vide order dated March 22, 2002. He has accordingly joined on April 3, 2002 accepting all the terms and conditions including condition concerning seniority w.e.f. the date of joining against the new post forfeiting his seniority in old cadre of BFC Instructor which has been abolished.

We have gone through the impugned order dated August 3, 2005 (P-10) minutely and are inclined to uphold the same for the simple reason that after the abolition of the posts of BFC Instructor, there were two options available to the petitioner either to get adjusted on an alternative post which was offered to him i.e. of Lineman (Theory) Instructor or walk out of the Department by accepting the benefit in accordance with law. However, on the option given by the Department, he has opted for the latter post of accepting alternative employment and agreeing to the grant of seniority from the date he join the post of Lineman (Theory) Instructor. Therefore, we do not find any legal infirmity in the impugned order warranting our interference.

The writ petition is wholly without merit and the same is accordingly dismissed.

(M.M.KUMAR)
JUDGE

November 6, 2006 (M.M.S.BEDI)
sanjay JUDGE